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No. 91-453

Supreme Court, U.S.
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Dec. 31, 1991
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In The

Supreme Court of the United States

October Term, 1991

DAVID H. LUCAS,

Petitioner,

v.

SOUTH CAROLINA COASTAL COUNCIL,

Respondent.

On Writ Of Certiorari To The Supreme Court Of The State Of South Carolina

JOINT APPENDIX

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Certiorari Granted November 18, 1991

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DAVID H. LUCAS v.
SOUTH CAROLINA COASTAL COUNCIL

RELEVANT DOCKET ENTRIES

Complaint 1/05/89

Amended Answer 6/22/89

South Carolina Circuit Court Hearing 8/07/89

Decision of South Carolina Circuit Court 8/10/89

Decision of South Carolina Supreme Court 2/11/91

Denial of Petition for Rehearing South Carolina Supreme Court 6/17/91

Petition for Writ of Certiorari 9/13/91

STIPULATIONS FROM SOUTH CAROLINA CIRCUIT COURT HEARING (PAGES SOUTH CAROLINA SUPREME COURT TR. 12, 13, 14)

* * *

The Plaintiff and Defendant in the above referenced matter stipulate to the following facts:

1. Don Pardue, MAI, the expert appraiser for the Plaintiff is an expert qualified to testify concerning the values of the subject property.

2. Chris Donato, MAI, the expert appraiser for the Defendant is an expert qualified to testify concerning the values of the subject property.

3. David Stevens, Wando Engineering, is an engineer qualified to assist in the preparation of maps and plats of the property in question.

4. Chris Jones, Coastal Science and Engineering, is a coastal engineer who is an expert qualified to testify about shoreline processes and beachfront management.

5. The shorelines depicted on the Plaintiff's plats and on Defendant's exhibits are accurate and that the baseline and 20 foot no construction line stated on Plaintiff's and Defendant's exhibits is an accurate depiction.

6. For the sake of argument of this case, both parties agree that while the base line and 20 foot no construction line currently are interim lines, that for purposes of the case that they are permanent lines which will not be moved landward or seaward before 1990.

7. All photographs are entered into the record without objection.

8. The following documents are entered into evidence without objection:

9. There is no erosion control device in front of Lot 24. A revetment exists partially on Lot 23 and is part of a continuous revetment which continues to the south of this lot.

10. Under current law, the Plaintiff can build a walkway to the beach without a permit and a small deck. The Council will not prevent the use of this lot for location of temporary structures such as trailers or tents.

11. The current law prevents construction of any habitable structures or recreational amenities on the subject lots.

12. The beach is primarily effected by the effects of Dewees Inlet and is generally accretional at a rate of 2.4 feet per year. However, erosion does occur at the beach in question.

13. The subject lots have houses on either side of them.

14. The appropriate methodology used for this stretch of beach is that of an unstabilized inlet zone pursuant to Section 48-39-280. This methodology sets the baseline at the most landward position of the shoreline during the past forty years and is depicted on both the Plaintiff's and Defendant's exhibits. Both the baseline and 20 foot no construction line at entirely landward of the two lots.

15. The intended use for Lot 22 and 24 is for construction of single-family homes.

16. The South Carolina Coastal Council agrees that any application for a permit to build would have been denied, however, it reserves as an argument

concerning temporary damages that no permit has been applied for by Plaintiff.

* * *

EXCERPTS FROM TESTIMONY OF CHRISTOPHER JONES (PAGES SOUTH CAROLINA SUPREME COURT TR. 70, 71)

* * *

Q. All right, sir. Now, I ask you if you can identify Exhibit Number 30 – Defendant's Exhibit Number 39 and tell me what this demonstrates?

A. Those are 1988 aerial photographs flown on July first and second of 1988 for the Coastal Council, showing the area in question, Beechwood East, and Dunecrest Lane further to the right.

There are two lines drawn across the drawing. The seaward most of the lines is the base line. The landward most twenty feet further back is the no-construction line and setback line.

Q. Can you come down with a pencil and just mark for the Judge – point to where the lines are and then show me where the Lucas lots are? This will probably look a lot better. Let's give you that.

A. This first line is the base line. The second one is the setback line. The Lucas lots are here, Lot 22 and then Lot 24. Lot 23 is the house we discussed previously.

Q. Can you basically tell me what methodology was used in order to determine the location of these lines?

A. These lines were established last fall. It's actually the second generation of interim lines at the site. They were established thinking that the base line was the most landward point of erosion or the most landward location of the shoreline over the last forty years.

In this area the baseline was set along a 1963 vegetation line. I'm not saying mean high water line. I'm talking about the scarp line which separates the uplands from the beach on eroding property. The property was eroding at that point in time and we were left with a distinct line.

Q. That's how the baseline was drawn?

A. Right.

Q. Now, the second line behind the baseline is designated as what?

A. It's actually two lines on top of each other. The twenty foot no-construction line and the forty year setback line.

This is an area which has been considered over the long term to be accretional, and as such the setback line is a minimum twenty foot setback.

* * *

EXCERPTS FROM TESTIMONY OF STEVEN MOORE (PAGES SOUTH CAROLINA SUPREME COURT TR. 108, 109)

* * *

Q. Mr. Moore, you know good and well that if Dave Lucas came in and asked to go out on the front beach and scrape sand to put on his lots you wouldn't do it. Isn't that correct?

A. No, I can't say that.

Q. Not the Isle of Palms, but Dave Lucas.

A. I don't know. I really don't. It would depend on the circumstances of the application.

Q. And after July 1, 1988, had Mr. Lucas come in to you as permit administrator for the South Carolina Coastal Council and applied for a permit to build a house on Lot – on Lot 24 or Lot 22, you would have denied it?

A. That's correct.

Q. Isn't that correct?

A. That's correct.

Q. And as far as his ability to put a tent or mobile home or trailer on Lots 22 and 24, it would be okay with you, is my understanding. Is that correct?

A. That's correct.

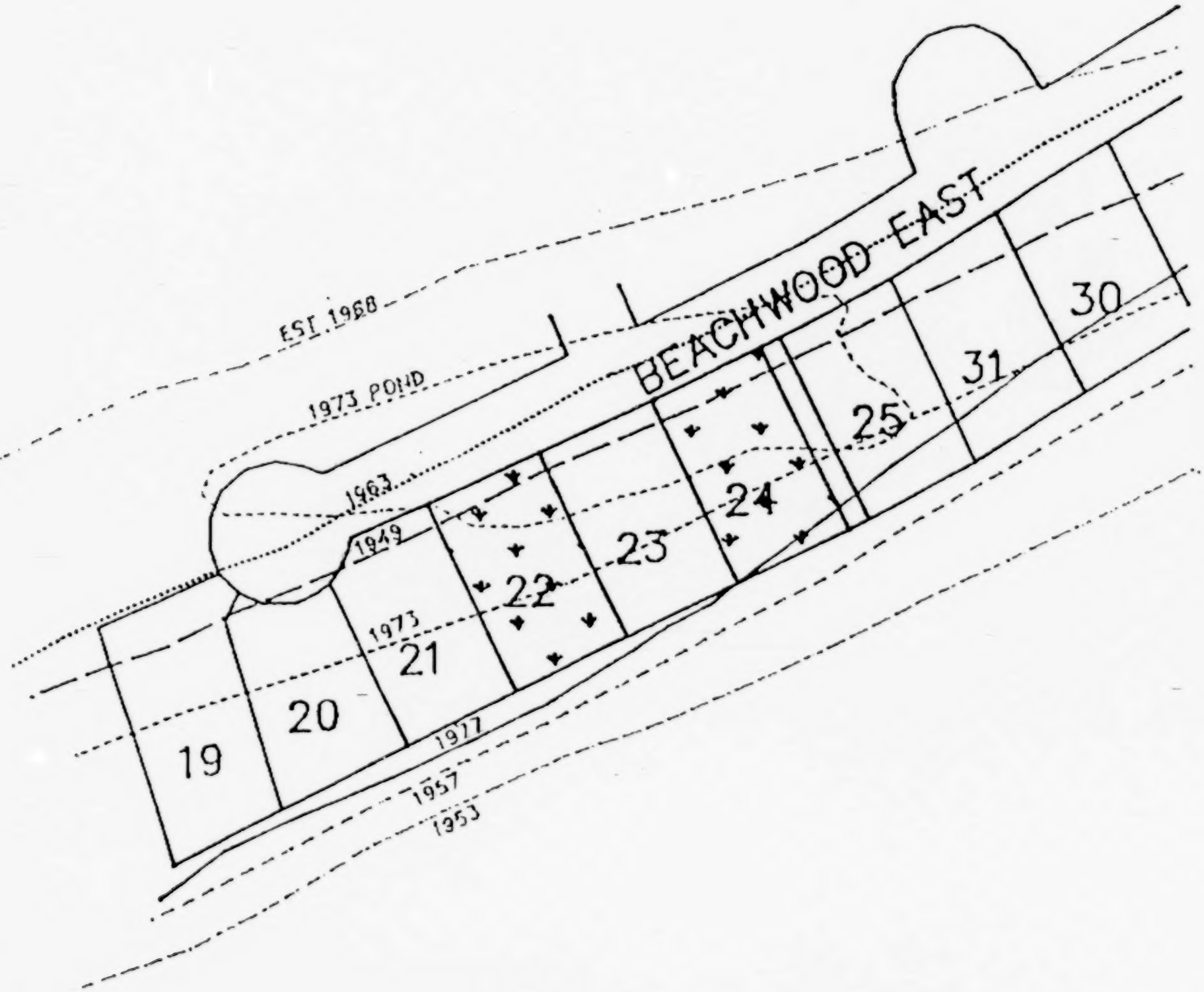
Q. But you don't know what Wild Dunes Association out there would allow, do you?

A. No, I don't.

Q. One final question. As of July 1, 1988, wouldn't you agree that there was a substantial beach in front of Lots 22 and 24?

A. Yes.

* * *



DEFENDANT/RESPONDENT'S EXHIBIT 22 FROM
SOUTH CAROLINA CIRCUIT COURT HEARING